

Award No. 804  
Docket No. 733  
2-DL&W-CM-'42

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 78, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. OF L. (CARMEN)**

**THE DELAWARE, LACKAWANNA AND WESTERN  
RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:** A—That the carrier is and persists in violating Rule 26, the seniority of carmen helpers, and Rule 100, the classification of work of carmen helpers by using carmen in the place of helpers and to the detriment of helpers.

B—That the following named carmen helpers be paid time and one-half for work performed by mechanics on the carmen helpers' scheduled day-off, "which is considered their Sunday" within the meaning of Rule 3 of the agreement governing rules and working conditions:

John Hryczko .....	16 hours
E. Szymendera .....	8 hours
Stanley Lembicz .....	8 hours
John Chanda .....	8 hours
Barney Zoldowski .....	8 hours
P. Fultz .....	8 hours
J. Wesolowski .....	8 hours

**EMPLOYEES' STATEMENT OF FACTS:** At the East Buffalo, N. Y., freight yard, on May 18 and June 22, 1941, Mechanics Rawls and Swiatek were assigned to oil cars in place of John Hryczko. Mechanic F. Machnica was assigned to oiling and packing of cars on June 1, 1941, in place of E. Szymendera. Frank Swiatek, a mechanic, was assigned to oiling and packing of cars on June 3, 4, 6 and 23, 1941, in place of Stanley Lembicz, John Chanda, Barney Zoldowski and P. Fultz. Mechanic L. Mruk oiled and packed cars on June 27, 1941, in place of John Wesolowski.

That Carmen Helpers John Hryczko, E. Szymendera, Stanley Lembicz, John Chanda, Barney Zoldowski, P. Fultz and J. Wesolowski are regularly employed by the carrier at the East Buffalo, N. Y., freight yard, were off duty, but available for service the aforesaid days that mechanics were assigned to perform helpers' work.

In accordance with Rule 26, carmen helpers are confined to their respective seniority group at point employed in the maintenance of equipment department. Their seniority rosters are separate from those of other carmen.

**POSITION OF EMPLOYEES:** Men in the car department are assigned to work 6 days per week, the 6 days are worked in a spread of 7 days, the time is arranged so that all men are assigned 1 day off per week, which is considered their Sunday, in accordance with Rule 3, which reads in part as follows:

as car inspector was used to dope and oil cars for 4 hours. He was paid his regular wages.

There were no furloughed oilers on the Lackawanna Railroad during the above period.

**POSITION OF CARRIER:** The railroad company agrees that the work of doping and oiling cars may be performed by carmen helpers. Rule 100 of the agreement of November 1, 1935, entitled "Carmen Helpers" contains the words "car oilers and packers." However, the railroad company also contends that the work may be done by carmen. Rule 98 of the agreement entitled "Carmen's Classification of Work" reads in part as follows:

"Carmen's work shall consist of building, **maintaining**, dismantling, repairing, painting, and upholstering and inspecting all passenger and freight cars, both wood and steel \* \* \* and all other work generally recognized as carmen's work."

The claim, therefore, comes down to the question as to whether or not carmen under Rule 98 can dope and oil cars. In determining the answer to that question, the words "maintaining passenger and freight cars" must be interpreted. In other words, what does the word "**maintain**" import? Webster's New International Dictionary, Second Edition, defines "maintain" as "to hold or keep in any particular state or condition, esp. in a state of efficiency to keep up, not to suffer to decline." For any type of railroad car to operate efficiently, it must not only be inspected for repairs and repairs made, but it must be inspected as to the condition of the oil in the journals and if necessary oil added. Such work is maintaining a railroad car, just as in the case of an automobile, greasing and oiling is maintenance.

As previously stated, it is the railroad company's contention that this work belongs to both oilers and carmen and can be performed by oilers under Rule 100 and by carmen under Rule 98 as "maintaining passenger and freight cars." The claim should be disallowed.

**FINDINGS:** The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

The evidence of record shows that the work performed by carmen, as indicated in the instant dispute, is regularly assigned to helpers of the carmen's craft, therefore, carmen helpers should have been used. However, the evidence does not justify claim for compensation.

#### AWARD

Claim that carmen helpers (oilers) instead of carmen should be used for the service performed is sustained.

Claim for compensation is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: J. L. Mindling  
Secretary

Dated at Chicago, Illinois, this 9th day of July, 1942.